

Senate File 2226 - Introduced

SENATE FILE 2226

BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 3148)

A BILL FOR

1 An Act relating to custody, physical care, and visitation
2 provisions relating to a child of a parent who is serving
3 active duty in the military service of the United States and
4 including effective date provisions.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 598.41C, subsection 1, Code 2009, is
2 amended to read as follows:

3 1. a. If an application for modification of a decree or a
4 petition for modification of an order regarding child custody
5 or physical care is filed prior to or during the time a parent
6 is serving active duty in the military service of the United
7 States, the court may only enter an order or decree temporarily
8 modifying the existing child custody or physical care order
9 or decree if there is clear and convincing evidence that the
10 modification is in the best interest of the child.

11 b. If the active duty of a parent affects the parent's
12 ability or anticipated ability to appear at a regularly
13 scheduled hearing, the court shall provide for an expedited
14 hearing in matters instituted under this section.

15 c. If the active duty or anticipated active duty of a parent
16 prevents the parent from appearing in person at a hearing, the
17 court shall provide, upon reasonable advance notice, for the
18 parent to present testimony and evidence by electronic means
19 in matters instituted under this section. For the purposes of
20 this paragraph, "*electronic means*" includes communication by
21 telephone, video teleconference, or the internet.

22 d. Upon the parent's completion of active duty, the court
23 shall reinstate the custody or physical care order or decree
24 that was in effect immediately preceding the period of active
25 duty. If an application for modification of a decree or a
26 petition for modification of an order is filed after a parent
27 completes active duty, the parent's absence due to active duty
28 does not constitute a substantial change in circumstances,
29 and the court shall not consider a parent's absence due to
30 that active duty in making a determination regarding the best
31 interest of the child.

32 Sec. 2. NEW SECTION. 598.41D Assignment of visitation —
33 parent serving active duty — family member.

34 1. Notwithstanding any provision to the contrary, a parent
35 who has been granted court-ordered visitation with the parent's

1 minor child may file an application for modification of a
2 decree or a petition for modification of an order regarding
3 child visitation, prior to or during the time the parent is
4 serving active duty in the military service of the United
5 States, to temporarily assign that parent's visitation rights
6 to a family member of the minor child, as specified by the
7 parent. The application or petition shall be accompanied by an
8 affidavit from the family member indicating the family member's
9 knowledge of the application or petition and willingness to
10 exercise the parent's visitation rights during the parent's
11 absence. The application or petition shall also request
12 any change in the visitation schedule necessitated by the
13 assignment.

14 2. a. If the active duty of a parent affects the parent's
15 ability or anticipated ability to appear at a regularly
16 scheduled hearing, the court shall provide for an expedited
17 hearing in matters instituted under this section.

18 b. If the active duty or anticipated active duty of a parent
19 prevents the parent from appearing in person at a hearing, the
20 court shall provide, upon reasonable advance notice, for the
21 parent to present testimony and evidence by electronic means
22 in matters instituted under this section. For the purposes of
23 this paragraph, "*electronic means*" includes communication by
24 telephone, video teleconference or the internet.

25 3. a. The court may grant the parent's request for
26 temporary assignment of visitation and any change in the
27 visitation schedule requested if the court finds that such
28 visitation is in the best interest of the child.

29 b. In determining the best interest of the child, the court
30 shall ensure all of the following:

31 (1) That the specified family member is not a sex offender
32 as defined in section 692A.101.

33 (2) That the specified family member does not have a history
34 of domestic abuse, as defined in section 236.2. In determining
35 whether a history of domestic abuse exists, the court's

1 consideration shall include but is not limited to commencement
2 of an action pursuant to section 236.3, the issuance of a
3 protective order against the individual or the issuance of a
4 court order or consent agreement pursuant to section 236.5,
5 the issuance of an emergency order pursuant to section 236.6,
6 the holding of an individual in contempt pursuant to section
7 664A.7, the response of a peace officer to the scene of
8 alleged domestic abuse or the arrest of an individual following
9 response to a report of alleged domestic abuse, or a conviction
10 for domestic abuse assault pursuant to section 708.2A.

11 (3) That the specified family member does not have a record
12 of founded child or dependent adult abuse.

13 (4) That the specified family member has an established
14 relationship with the child.

15 (5) That the specified family member is able to personally
16 and financially support the child during visitation.

17 4. An order granting assignment of visitation rights under
18 this section does not create separate rights to visitation for
19 a person other than the parent.

20 5. The parent shall provide a copy of the order granting
21 assignment of visitation to the school and school district of
22 the child to whom the order applies.

23 6. An order granting temporary assignment of visitation
24 rights pursuant to this section shall terminate upon
25 notification of the court by the parent or automatically upon
26 the parent's completion of active duty, whichever occurs first.

27 7. After a parent completes active duty, if an application
28 for modification of a decree or a petition for modification
29 of an order is filed, the parent's absence due to active duty
30 or the assignment of visitation rights does not constitute a
31 substantial change in circumstances, and the court shall not
32 consider a parent's absence due to that active duty or the
33 assignment of visitation rights in making a determination
34 regarding the best interest of the child relative to such an
35 application or petition filed after a parent completes active

1 duty.

2 8. As used in this section, "*active duty*" means active
3 military duty pursuant to orders issued under Tit. X of the
4 United States Code. However, this section shall not apply to
5 active guard and reserve duty or similar full-time military
6 duty performed by a parent when the child remains in actual
7 custody of the parent.

8 Sec. 3. EFFECTIVE UPON ENACTMENT. This Act, being deemed of
9 immediate importance, takes effect upon enactment.

10 EXPLANATION

11 This bill relates to child custody, physical care, and
12 visitation of a minor child and a parent who is serving active
13 duty.

14 The bill amends a current Code provision relating to custody
15 and physical care of the child by providing for expedited
16 hearings and the presentation of testimony and evidence by
17 electronic means by a parent who is affected by active duty.

18 The bill also provides that a parent who has been granted
19 court-ordered visitation with the parent's minor child may
20 file an application for modification of a decree or a petition
21 for modification of an order regarding child visitation, prior
22 to or during the time the parent is serving active duty, to
23 temporarily assign that parent's visitation rights to a family
24 member of the minor child, as specified by the parent. The
25 application or petition must be accompanied by an affidavit
26 from the family member indicating the family member's knowledge
27 of the application or petition and willingness to exercise the
28 parent's visitation rights during the parent's absence. The
29 application or petition must also request any change in the
30 visitation schedule necessitated by the assignment.

31 The bill also provides for an expedited hearing on the
32 application or petition if the active duty or anticipated
33 active duty of the parent affects the parent's ability to
34 appear at a regularly scheduled hearing and for presentation
35 of testimony and evidence by electronic means if the parent

1 is prevented from appearing in person due to the active duty
2 or anticipated active duty, upon reasonable advance notice.
3 "Electronic means" includes communication by telephone, video
4 teleconference, or the internet.

5 The court may grant the parent's request for temporary
6 assignment of visitation if the court finds that such
7 visitation is in the best interest of the child. The bill
8 provides elements for the court to review in determining the
9 best interest of the child. The assignment of visitation
10 rights does not create separate rights to visitation for a
11 person other than the parent. The bill directs the parent to
12 provide a copy of the order granting assignment of visitation
13 to the school and school district of the child to whom the
14 order applies. The order granting temporary assignment of
15 visitation terminates upon notification of the court by the
16 parent or automatically upon the parent's completion of active
17 duty, whichever occurs first.

18 The bill provides that after a parent completes active duty,
19 if an application for modification of a decree or a petition
20 for modification of an order is filed, the parent's absence
21 due to active duty or the assignment of visitation does not
22 constitute a substantial change in circumstances, and the
23 court shall not consider a parent's absence due to that active
24 duty or the assignment of visitation in making a determination
25 regarding the best interest of the child relative to such an
26 application or petition filed after a parent completes active
27 duty.

28 "Active duty" is defined as active military duty pursuant
29 to orders issued under Title X of the United States Code.
30 However, the bill does not apply to active guard and reserve
31 duty or similar full-time military duty performed by a parent
32 when the child remains in actual custody of the parent.